

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re: Jeffrey L. Richardson,

Debtor.

Case No. 04-75839  
Chapter 13  
Hon. Marci B. McIvor

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**OPINION GRANTING IN PART AND DENYING IN PART TRUSTEE'S  
OBJECTIONS TO FIRST APPLICATION FOR ATTORNEY FEES**

This matter is before the Court on the Trustee's Objections to Debtor's Counsel's First Application for Attorney Fees. The Trustee objects to the hourly rate as excessive and asserts that several of the specific time entries are excessive and unreasonable. For the reasons stated in this Opinion, the Court sustains in part and denies in part the Trustee's Objections.

**Jurisdiction**

This is a core proceeding under 28 U.S.C. § 157 (b)(2)(A) over which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(a).

**Statement of Facts**

Debtor filed a voluntary Chapter 13 bankruptcy petition on December 21, 2004. No plan was confirmed and the case was dismissed (on an unopposed oral motion by the Chapter 13 Trustee) on March 31, 2005. On the same day, Debtor's counsel filed an application for attorney fees seeking \$3,920.00 (5.6 hours at \$200.00 per hour and 16.0 hours at \$175.00 per hour) for legal services and \$ 78.20 for expenses (copies and postage). On April 14, 2005, the Trustee filed objections to the fee application. The Trustee contends that the hourly rate of \$200.00 is excessive and that several specific time entries are excessive and unreasonable.

**Standard for Fee Awards in Bankruptcy**

A court has the duty to review all fee applications, regardless of whether an objection has been filed, in order to protect the assets of the estate for the benefit of the creditors. 11 U.S.C. §

330(a)(2); *In re Bush*, 131 B.R. 364, 365 (Bankr. W.D. Mich. 1991). A bankruptcy court has broad discretion in determining fee awards. *Manufacturers Nat'l Bank v. Auto Specialties Mfg. Co.* (*In re Auto Specialties Mfg. Co.*), 18 F.3d 358 (6<sup>th</sup> Cir. 1994).

Section 330(a)(1) of the Bankruptcy Code provides that the court may award an attorney reasonable compensation for actual, necessary services rendered. 11 U.S.C. § 330(a)(1).

Section 330(a) provides, in pertinent part:

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 -

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(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any para-professional personal employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant facts, including

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue or task addressed; and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for --

(i) unnecessary duplication of services; or

(ii) services that were not --

(I) reasonably likely to benefit the debtor's estate, or;  
(II) necessary to the administration of the case.

11 U.S.C. § 330(a) (emphasis added).

To summarize, 11 U.S.C. § 330(a) requires that requested fees must meet three conditions. The fees must be: (1) reasonable; (2) incurred for services that were actually rendered; and (3) incurred for services that were necessary. *In re Allied Computer Repair, Inc.*, 202 B.R. 877 (Bankr. W.D. Ky. 1996).

The Sixth Circuit has adopted a "lodestar method" for actually applying the requirements set forth in 11 U.S.C. § 330. *In re Boddy*, 950 F.2d 334, 337 (6<sup>th</sup> Cir. 1991). The lodestar method requires that the court first determine a reasonable hourly rate, and then multiply the rate times the reasonable number of hours expended to perform actual, necessary services. The Court may "then determine whether a global reduction or enhancement of the fees is in order." *In re Atwell*, 148 B.R. 483, 492-93 (W.D. Ky. 1993). The ability to review fee applications in the context of each individual case "permits the Court to balance the following two competing interests: (1) rewarding the attorney practicing bankruptcy on a level commensurate with other areas of practice; against (2) the need to encourage cost-conscious administration." *Allied Computer Repair, Inc.*, 202 B.R. at 884-85. The burden of proof is upon the applicant to justify the requested fees. *In re Hamilton Hardware Co., Inc.*, 11 B.R. 326 (Bankr. E.D. Mich. 1981).

### **Objections to Fees**

## **1. Hourly Rate**

The Trustee objects to the hourly rate charged by Debtor's attorney, asserting that the rate is excessive. (Trustee's Objections, ¶ 2). Bankruptcy attorneys are generally entitled to an hourly fee in line with the prevailing market rates in the community. *In re ACT Manufacturing*, 281 B.R. 468, 486 (Bankr. D. Mass. 2002)("[T]he Court should apply the rate customarily charged for similar services in the locality. . ."). The Court may itself determine the prevailing market rate in the community and thus evaluate the reasonableness of the attorneys' hourly rate. *In re Computer Learning Centers*, 285 B.R. 191, 227 (Bankr. E.D. Va. 2002). "The court is in an excellent position to evaluate the prevailing market rate for attorney's fees by virtue of the innumerable fee applications presented to [it]. . . The very number of applications provides an exceptional view of the breadth and depth of the legal community and the fees charged. . ." *Id.*

In the present case, the Trustee objects to the hourly rate asserting that it is excessive as compared to the rate charged by comparable chapter 13 practitioners and that the quality of the services performed was not significantly above average. While the Court agrees that an hourly rate of \$200 is above average in the context of most chapter 13 cases (particularly for a case which was not confirmed), the quality of the services performed by counsel in this case justify the rate requested. Counsel's efforts made confirmation possible even though Debtor ultimately elected not to proceed with the case. The hourly rate charged by Debtor's counsel in this case is warranted.

## **2. Specific Time Entries**

a. The Trustee objects to time entries dated January 12, 2005, January 17, 2005, January 21, 2005, January 26, 2005, January 31, 2005, all of which relate to Debtor's Counsel's defense of a state court eviction action brought against Debtor by his former landlord. The Trustee asserts that the fees sought for those dates should be denied because the services are

not properly compensable under § 330 and brought no benefit to the estate or to creditors. The Court disagrees.

Debtor, employed as an electrical engineer, also owns a hobby shop in Chelsea, Michigan. The state court eviction action was brought against Debtor and/or his hobby shop by the shop's landlord. Because the shop is located in a small town and relies heavily on repeat customers, Debtor was understandably reluctant to move the operation; a move Debtor believed would have a severe negative impact on the business. Thus, Debtor and his attorney appropriately opposed the state court proceeding. While Debtor ultimately located a less expensive site for the business (reasonably close to the old location) and abandoned the lease dispute, the actions taken by counsel in defending the action were appropriate. On the facts of this case, the Court will not deny Counsel fees related to the state court proceeding. The Trustee's objection is overruled.

**b.** The Trustee objects to a time entry dated February 17, 2005 for time spent working on an amended Chapter 13 plan and an amended statement of financial affairs. The Trustee asserts that the time charged is unreasonable and unnecessary because the amendments were never filed. At the time the work was done, Debtor's Counsel was attempting to ensure the case would comply with the requirements of the Code and be ready for confirmation. While subsequent circumstances made the amendments unnecessary, the efforts expended were appropriate at the time they were made, and Counsel should be paid for the work. The Trustee's objection is overruled.

**c.** The Trustee objects to a time entry dated February 14, 2005 related to attending an adjourned § 341 hearing and an entry dated March 31, 2005 related to Counsel's appearance at a confirmation hearing. Each entry includes two hours of travel time. The Trustee asserts that both entries are excessive and unreasonable. With respect to the March 31 entry, Trustee

claims that Debtor decided not to proceed with his case before that date thus it was not necessary for Counsel to appear for the hearing at all. The Court agrees. It is not reasonable to charge a chapter 13 debtor \$350 in travel time each time counsel appears in Court. The Court will allow Counsel one hour of travel time related to the § 341 meeting. The Court denies all fees related to the confirmation hearing. Accordingly, the fees requested will be reduced by \$700 (4 hours at \$175).

### **Conclusion**

For the reasons stated above, the Court sustains in part and denies in part the Trustee's Objections to Debtor's Counsel's First Application for Attorney Fees. Debtor's Counsel is awarded fees in the amount of \$ 3,220.00 and expenses in the amount of \$78.20.

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/s/  
Marci B. McIvor  
United States Bankruptcy Judge

Dated: May 20, 2005  
Detroit, Michigan

cc: David Ruskin  
Michelle Marrs